IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.3841 of 1993

Between:

M.Sreerama Murthy and 10 others

..... PETITIONER

AND

Government of India, represented by Secretary

to Government, Ministry of Commerce, New Delhi

and 39 others

(RR1, 3to5,9,11,17 to 40 dismissed

for default vide Court order dt.22.6.01)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly a writ of mandamus declaring the action of the second respondent herein in preparing the seniority list without following the quota and rota as per the instructions of the first respondent as arbitrary, illegal and unconstitutional, set aside the impugned seniority list issued in reference No.19(1)/79.P.AD dated 24.9.1992, consequently direct the second respondent to revise the seniority list treating all petitioners as seniors to respondents 3 to 40, grant all consequential benefits to all the petitioners including promotion to the higher category and pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interests of justice.

Counsel for the Petitioner: Mr. T.SURYAKARAN REDDY &

Mr. C.SUDESH ANAND

Counsel for the Respondent No.1: Mr. N. RAGHAVA REDDY

Counsel for the Respondent No.2: Mr. S.SREENIVASA REDDY

Counsel for Respondents 3 to 40: Mr. B. ADINARAYANA RAO

The Court made the following :

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.3841 of 1993

O R D E R :

This Writ Petition is filed seeking a Mandamus declaring the action of the 2nd respondent in preparing the seniority list without following the quota and rota as per the instructions of the 1st respondent as arbitrary, illegal and unconstitutional and to set aside the seniority list issued in Ref.No.19(1)/79.P.AD, dated 24-9-1992 and consequently to direct the 2nd respondent to revise the seniority list treating all the petitioners as seniors to respondents 3 to 40 and to grant all consequential benefits.

It is the case of the petitioners that they have been initially appointed as Field Assistants with effect from 6-1-1978. Subsequently, they were promoted as Junior Field Officers on 25-10-1982 and further promoted as Field Officers from 29-12-1984; whereas, respondents 3 to 20 (first batch) are direct recruits appointed with effect from 13-10-1983 as Field Officers. Likewise, respondents 21 to 40 (second batch) were also appointed directly as Field Officers, who joined duty in the month of September,1984. As per Regulation 7(iv) of the Tobacco Board (Recruitment)

Regulations 1982, (for short 'the draft regulations'), the *inter se* seniority of promotees and direct recruits shall be determined according to the cycle of vacancies meant for the promotees and direct recruits based on the quota of vacancies reserved for direct recruitment and promotion respectively in the schedule annexed to the Rules. The schedule appended thereto speaks that the method of recruitment is promotion/direct recruitment in the ratio of 1:1. Therefore, the seniority of direct recruits and promotees shall be maintained in the alternative points i.e. one promotee and the next direct recruit. That is how the *inter se* seniority list has to be maintained. Earlier when *inter se* seniority list of direct recruits and promotees was prepared, the first batch direct recruits were shown above all and the petitioners and second batch of direct recruits were shown by following the ratio of 1:1. At that time also, the petitioners filed W.P.No.1460 of 1987 and even the second batch of direct recruits to the post of Field Officer also filed W.P.No.1314 of 1987 aggrieved by the said seniority list. Both the writ petitions were heard together and disposed of by a common Judgment dated 6-4-1988 as under:

> "Even the 1982 Regulations do not prescribe rota; they only prescribe the quota. As these regulations have no legal validity as has been fairly conceded by the counsel for both sides, it is not open to either side to rely upon the regulations. The contention of the promotee officers is that because of the ratio of 1:1 prescribed in 1982 regulations, the seniority list should be drawn up interspersing promotees and direct recruits in that ratio. But, they are overlooking one cardinal fact, namely, that even under 1982 draft regulations the eligibility for promotion is 3 years service as Junior Field Officers. On 25-12-1982 when the petitioners were promoted as Junior Field Officers, B.Sc.(Ag.) was the necessary qualification and this qualification is not possessed by any of the promotee officers. They are all Science graduates but not graduates in Agriculture. By the date of their promotion i.e., 31-12-1984 they did not have three years service as specified in the draft regulations. Therefore, it is not open to them to base their claim on the draft regulations of 1982, which have no legal validity.
>
> The present position is very uncertain. The Board cannot allow the status quo to continue; this will not be in the interests of good administration. The employees must know what their service conditions are. It is, therefore, necessary that the Board should take expeditious steps for getting the regulations approved by Government of India.
>
> When there are no regulations governing the seniority, it is settled law that the date of continuous officiation shall be the criterion: Vide R.N. SINGH Vs. STATE OF BIHAR (1980(2) SLR 43). In view of this legal position, I am unable to accede to the contention of the learned counsel Sri Venkataramanaiah that pending approval of regulations by the Government of India the existing seniority should not be disturbed.

> The first respondent-Tobacco Board is, therefore, directed to submit the draft regulations within two months from the date of receipt of this order, to the Government of India for approval and the Government of India, the 2nd respondent herein, should within four months thereafter, finalize the regulations under Section 33(3) of the Act. Until the regulations as approved by the Government of India come into existence, the Tobacco Board shall go by the principle of continuous officiation for the purpose of determining on ad hoc basis the seniority of promotees and direct recruits in the cadre of Field Officers. Based on such continuous officiation only promotion should be given on ad hoc basis. After the Government of India approves the regulations, the promotions have to be reviewed and seniority has to be refixed in accordance with those regulations."

Ultimately, the Regulations were approved as stated supra deleting the enabling provision for promotion from the post of Junior Field Officer to the post of Field Officer. After the approval of the draft Regulations with effect from 22-9-1989, the *inter se* seniority of both the petitioners as well as the unofficial respondents was taken up and the final seniority list was published, wherein all the direct recruits of first and second batches as noted above, were placed above the petitioners and the petitioners were shown as juniors to them. Therefore, the present writ petition is filed.

A detailed counter affidavit has been filed by the 2nd respondent-Tobacco Board denying the allegations made by the petitioners and asserting *inter alia* that the very promotion of the petitioners to the post of Field Officer was illegal. In fact, the petitioners do not possess B.Sc. (Agriculture) qualification, which was essential for recruitment to the post of Field Officer. In the earlier Writ Petition Nos.1314 and 1460 of l987, this Court directed that until the Regulations as approved by the Government of India come into existence, Tobacco Board shall go by the principle of continuous officiation for the purpose of determining on *ad hoc* basis the seniority of promotees and direct recruits in the cadre of Field Officer and based on such continuous officiation only promotions should be given on adhoc basis. After the Government of India approves the Regulations, promotions have to be reviewed and seniority has to be refixed in accordance with those Regulations (amended Regulations). Therefore, the seniority list under challenge was prepared strictly in accordance with the directions of this Court.

Heard both sides.

I have given my earnest consideration to the submissions made by both the parties and gone through the entire material made available on record including the Judgment in W.P.Nos.1314 and 1460 of 1987.

The only question that arises for consideration is whether the *inter se* seniority list of direct recruit and promotee Officers in the cadre of Field Officer of the Tobacco Board is correct or not ?

The facts are not much in dispute. The first batch of direct recruits were appointed as Field Officers with effect from 13-10-1983 and the second batch in the month of September,1984; whereas, the petitioners were promoted to the post of Field Officer with effect from 29-12-1984 i.e. after appointment of first and second batch direct recruits. Insofar as the *inter se* seniority of the promotees (petitioners) and the direct recruits (unofficial respondents) was concerned, as seen above, it was a subject matter of two writ petitions, which were disposed of by a common Judgment dated 6-4-1988. In the said Judgment, as noted above, this Court noticed that counsel appearing for both sides therein have conceded that the Regulations of 1982 have no legal validity. Further, it was also noticed that even the Regulations of 1982 do not prescribe rota; they only prescribe the quota. Under those circumstances, the writ petitions were disposed of holding that until the Regulations are approved by the Government of India, the Board shall go by the principle of continuous officiation for the purpose of determining on *ad hoc* basis the seniority of promotees and direct recruits in the cadre of Field Officer. As the ill luck would have, the Regulations, which were approved with effect from 22-9-1989, had taken away the very enabling provision for promoting the Junior Field Officers to the post of Field Officer leave alone the quota or rota. Therefore, Sri B.Adinarayana Rao, learned counsel appearing for unofficial respondents, has rightly stated that the rights of the parties have already been concluded and attained finality in the common Judgment passed in W.P.Nos.1314 and 1460 of 1987, dated 6-4-1988. Therefore, the contention of the learned counsel for the petitioners that the right of the petitioners to claim seniority, though the enabling provision for promotion from the cadre of Junior Field Officer to the Field Officer was taken away under the approved Regulations, since both the direct recruitment and promotions were effected as per the draft Regulations and the draft Regulations contemplated the filling up of Field Officers posts at 1:1 ratio, the petitioners are entitled to claim seniority at the alternative points (i.e. 2,4,6……) cannot be accepted. The quota - rota was also the subject matter of the earlier writ

petitions in W.P.Nos.1314 and 1460 of 1987 and all the counsel appeared therein have admitted that the draft Regulations have no legal validity and this Court noted that it was only the quota, which was fixed and not the rota and directed the Tobacco Board to maintain seniority based on continuous officiation only. Since the very eligibility for being promoted to the post of Field Officer was not considered and included in the approved Regulations dated 22-9-1989, the petitioners have not accrued any right whatsoever for the purpose of their *inter se* seniority vis-à-vis direct recruits. The impugned Proceedings dated 24-9-1992 can neither be said to be arbitrary nor illegal requiring interference of this Court. In fact, the seniority list dated 24-9-1992 was prepared in the true spirit of the Judgment dated 6-4-1988 in W.P.Nos.1314 and 1460 of 1987. The decisions relied upon by the learned counsel for the petitioners in **VIMAL KUMARI v. STATE OF HARYANA** and **HIGH COURT OF GUJARAT v. GUJARAT KISHAN MAZDOOR PANCHAYAT** have no relevance to the facts of this case, particularly in view of the fact that the earlier orders passed by this Court have attained finality and the rights of the parties are concluded therein. The matter could not have been reagitated in the absence of any enabling provision as to promotion of the petitioners to the post of Field Officer and deciding *inter se* seniority of direct recruits and promotees under the draft Regulations. The draft Regulations have deemingly approved the appointment of unofficial respondents (batches 1 and 2), whereas there is no such sanction of promotion of the petitioners to the post of Field Officer.

For all the above reasons, the writ petition is devoid of merits and liable to be dismissed. Accordingly, the writ petition is dismissed. No costs.

17-3-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary to Government, Ministry

of Commerce, Government of India, New Delhi.

2. The Secretary, Ministry of Commerce, Tobacco Board,

Srinivasaraothota, Guntur.

3. Two CD copies.